

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
) WC Docket No. 02-313 - Biennial Review 2002 Reply Comment
<u>Biennial Review 2002</u>) WT Docket No. 02-310 - Biennial Review 2002 Reply Comments

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (Commission or FCC) Rules 1.415 and 1.419, respectfully submits these reply comments in the above-docketed proceeding. In these reply comments, USTA reiterates its reminder to the Commission that it has a statutory obligation to aggressively eliminate regulations identified as unnecessary in biennial reviews.² The Commission continues to submit regulations to indefinite study, to examine regulations in a piecemeal fashion through independent rulemakings, and continually fails to eliminate unnecessary regulations in a timely manner, all of which defeat the deregulatory purpose of the biennial review. USTA urges the Commission to move quickly to repeal and modify rules and regulations identified as no longer in the public interest. If the Commission does not take such action, its biennial review obligation will become meaningless and will fail to satisfy the public interest.

¹ USTA is the nation's oldest trade association for the local exchange carrier industry. USTA's members provide a full array of voice, data and video services over wireline and wireless networks.

² See *United States Telephone Association Petition for Rulemaking - 2000 Biennial Regulatory Review*, CC Docket No. 00-175, RM 9707, Petition for Rulemaking of the United States Telephone Association (Aug. 11, 1999); *Biennial Review 2000*, CC Docket No. 00-175, Comments of the United States Telecom Association (Oct. 10, 2000) (USTA 2000 Comments) ; and *Biennial Review 2002*, WC Docket No. 02-313 and WT Docket No. 02-310, Comments of the United States Telecom Association (Oct. 18, 2002) (USTA 2002 Comments).

I. DISCUSSION

General

USTA agrees with the comments of Verizon that the Commission is bound by law to review its regulations in every even-numbered year to determine which are unnecessary and that the repeal or modification of unnecessary regulations must occur within the same year in such determinations are made.³ If the Commission delays indefinitely the repeal and modification of rules identified in the biennial review process, it will render its biennial review obligations a nullity.⁴ Furthermore, USTA agrees with the National Telephone Cooperative Association (NTCA) that the Commission should not limit its review to whether meaningful economic competition alone justifies change but that it should also repeal or modify regulations when such action would serve the public interest and lessen regulatory burdens.⁵

USTA disagrees with the comments filed by Wyoming Public Service Commission (Wyoming PSC) that the Commission has made the biennial review too expansive by looking at whether regulations serve the public interest rather than just whether they are no longer justified due to the existence of meaningful competition.⁶ In addition, USTA vehemently disagrees that if the Commission continues its biennial reviews based on the public interest standard that it should invite a discussion on the expansion of rules and reporting requirements.⁷ As USTA has argued in the past, elimination – not promulgation – of regulation allows common carriers to serve their customers more cost-effectively and efficiently and encourages investment in the

³ See *Biennial Review 2002*, WC Docket No. 02-313, Comments of Verizon Telephone Companies at 8 (Oct. 18, 2002) (Verizon Comments).

⁴ See *id.* at 8-9.

⁵ See *Biennial Review 2002*, WC Docket No. 02-313, Comments of the National Telecommunications Cooperative Association at 2 (Oct. 18, 2002) (NCTA Comments).

telecommunications infrastructure. Furthermore, the Commission is bound by a statutory mandate set forth in Sections 11 and 202(h) of the Communications Act of 1934, as amended, to deregulate by eliminating regulation of telecommunications service that is no longer necessary in the public interest rather than create new regulation.

PART 32 – Uniform System of Accounts

The Commission in the 2000 Biennial Review recommended that substantial reductions to its accounting requirements should occur.⁸ USTA embraced the Commission's recommendation and has submitted comments in the accounting reform proceedings⁹ that echo the Commission's desire for pro-competitive and deregulatory accounting requirements. The Commission, however, recently released an order that convenes a Federal-State Joint Conference on accounting issues. The purpose of the Federal-State Joint Conference is to institute a dialogue that seeks to "ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough."¹⁰

The Wyoming PSC argues that the Commission should not act on proposals to modify, shrink or expand current accounting and reporting until such proposals have been referred to the Federal-State Joint Conference on Accounting Issues.¹¹ The Wyoming PSC goes further to argue that the Commission should place the Phase II Accounting Reform changes

⁶ See *Biennial Review 2002*, WC Docket No. 02-313, Comments of the Wyoming Public Service Commission at 2 (Oct. 17, 2002) (Wyoming PSC Comments).

⁷ See *id.*

⁸ See *The 2000 Biennial Regulatory Review*, CC Docket No. 00-175, Report, at 81 (rel. Jan. 17, 2001).

⁹ See *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, Notice of Proposed Rulemaking, CC Docket 00-199, FCC 00-364 (rel. October 18, 2000).

¹⁰ *Federal-State Joint Conference on Accounting Issues*, Order, WC Docket No. 02-269, FCC 02-240, ¶ 1 (rel. Sept. 5, 2002) (Joint Conference).

¹¹ See Wyoming PSC Comments at 4.

due to be implemented on January 1, 2003 on hold.¹² Commissioner Copps has even recommended “putting on hold all action to eliminate additional accounting requirements until the Joint Conference has had an opportunity to conduct its evaluation.”¹³ USTA respectfully disagrees.

USTA believes that a moratorium in regards to accounting reforms places an enormous burden upon incumbent local exchange carriers (ILECs), which creates a competitive disadvantage. In addition, USTA agrees with Verizon that the “Commission cannot forestall the Congressional mandate to ‘review’ and ‘repeal or modify’ unnecessary regulations every two years by simply submitting the regulations to indefinite study.”¹⁴ Thus, USTA urges the Commission to implement the Phase II Accounting Reform changes on January 1, 2003, and to move forward with its Phase III¹⁵ Accounting Reform proceeding.

Part 36 – Jurisdictional Separations Procedures; Standard Procedures for Separating Telecommunications Property Costs, Revenues, Expenses, Taxes and Reserves for Telecommunications Companies

The comments filed by NTCA included a recommendation that the Commission eliminate the requirement for waiver requests that a rural telephone company acquiring a neighboring exchange must file. NTCA recommends that a rural company acquiring a neighboring exchange be permitted to file a letter with the Commission indicating that it will incorporate newly acquired exchanges into its existing study area boundaries, noting that the Commission routinely grants study area waiver requests when rural telephone companies acquire

¹² See *id.* at 5.

¹³ See *Joint Conference*, Statement of Commissioner Copps.

¹⁴ See Verizon Comments at 16.

¹⁵ See *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*, CC-Docket Nos. 00-199, 99-301 and 80-286, Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911 (2001).

neighboring exchanges and want to incorporate the exchanges into their existing study areas.¹⁶

USTA recognizes that time and cost are often concerns for rural telephone companies seeking study area waivers. Accordingly, USTA recommends that the Commission should waive any fees associated with study area waiver requests and that the Commission should provide expedited treatment of these waiver requests, such that if a request is not approved within ten days, it is deemed automatically approved.

Part 52 – Numbering

In its comments USTA urged the Commission to permit non-LNP ILECs to recover their carrier-specific ongoing LNP-related costs.¹⁷ Specifically, USTA recommended that the Commission allow non-LNP ILECs to recover their actual costs through separations and access charge procedures.¹⁸ Likewise, for non-LNP ILECs that have LNP costs but cannot recover them through separations and access charge procedures (*i.e.*, certain price cap ILECs), the Commission should also permit these ILECs to recover their costs. Specifically, USTA urges the Commission to allow these non-LNP, price cap ILECs that have ongoing LNP-related costs to recover these costs through end user charges.

Part 53 – Separate Affiliate; Safeguards

In its comments, USTA urged the Commission to eliminate immediately Sections 53.203(a)(2) and (3) from its rules, which prohibit the sharing of operating, installation, and maintenance (OIM) functions between a Bell Operating Company (BOC) and its Section 272 affiliate.¹⁹ USTA notes that the comments of Verizon are in accord with those filed by USTA.²⁰

¹⁶ See NTCA Comments at 3.

¹⁷ See USTA 2002 Comments at 12.

¹⁸ See *id.*

¹⁹ See USTA 2002 Comments at 14.

In addition, since the Commission's OIM rules are premised on a part of the broader separate affiliate requirements of Section 272 of the Telecommunications Act of 1996 (1996 Act), USTA renews its related recommendations regarding the broader separate affiliate requirements, specifically how the Commission should address the application of the sunset provision of Section 272 of the 1996 Act. As stated in USTA's comments in the Commission's proceeding on sunset of BOCs' separate affiliate requirements, the "Commission should allow a BOC's Section 272 separate affiliate obligations to terminate automatically – either on a regional basis or a BOC-by-BOC basis – three years after the BOC first obtains Section 271 authority in a state in order to allow BOCs to use their resources efficiently and to compete with their competitors effectively. For the same reasons, the Commission should not extend the separate affiliate requirements and not establish alternative structural separates"²¹

Part 54, Subpart D – Universal Service; Universal Service Support for High Cost Areas

In the comments filed by NTCA, NTCA recommended that the Commission eliminate what is known as the "parent trap" rule in Section 54.305(a).²² Under the "parent trap" rule, a carrier that acquires an exchange from an unaffiliated carrier may only receive the same level of universal support for the acquired exchange at the same per-line support level for which the exchange was eligible prior to the transfer.²³ As NTCA notes, in many cases an acquired exchange is not eligible for universal service support because it was served by a large carrier that also served a major metropolitan area, thus leaving the acquiring carrier with no universal

²⁰ See Verizon Comments at 13-14.

²¹ See *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket 02-112, Comments of the United States Telecom Association at 9-10 (Aug. 5, 2002).

²² See NTCA Comments at 10-12.

²³ See 47 C.F.R. §54.305(a).

service funds to provide upgrades to customers of that exchange.²⁴ Likewise, USTA supports elimination of the “parent trap” rule. In the event the “parent trap” rule is not eliminated, NTCA seeks to amend the safety valve rule, which unnecessarily discourages the acquiring company from investing in the acquired exchange during the first year after acquisition, so that the acquiring company can begin to make investments for improvements to service immediately.²⁵ USTA supports NTCA’s recommendations that all new investment made by the acquiring company during the first year after acquisition should be recognized.

Part 61 – Tariffs

In its comments, USTA recommended that the Commission should eliminate the price cap “all-or-nothing” rules.²⁶ USTA notes that the comments of CenturyTel are in accord with those filed by USTA.²⁷ In addition, USTA supports the comments filed by NTCA on this matter.²⁸ Specifically, NTCA addresses the situation where a rural rate-of-return carrier purchases neighboring exchanges in the rural areas of large ILEC study areas and seeks a waiver from price cap regulation to include the acquired exchanges in its rate-of-return regulated study areas.²⁹ NTCA explains that the “all-or-nothing” rule serves no legitimate purpose when applied to such rural carriers and urges the Commission to eliminate the rule or exempt rate-of-return carriers from complying with it. USTA adds that the rule stifles rural rate-of-return carriers’ abilities to acquire neighboring exchanges that have a stronger community of interest with the rate-of-return carrier than with the larger ILEC. Eliminating the rule, or exempting such rural carriers from its application, would encourage rural carriers to make such acquisitions, which

²⁴ See NTCA Comments at 11.

²⁵ See NTCA Comments at 10-12.

would bring new technologies and services to customers in the acquired exchanges through the rural carriers' investments.

Part 64, Subpart I – Allocation of Costs

USTA urges the Commission to reconsider its decision not to eliminate the central office and equipment outside plant forecast rule.³⁰ If the Commission is unwilling to consider complete elimination of the requirement, USTA urges the Commission to streamline the forecasting process by requiring a three-year non-regulated forecast the first time investment becomes shared rather than requiring the three-year forecast every year.³¹

Part 69 – Access Charges

USTA supports the comments filed by CenturyTel recommending that the Commission eliminate the last sentence of Section 69.3(e)(9), allowing a carrier to file its own carrier common line access tariffs for one of its study areas, but to remain in the NECA common line pool for purposes of tariffs for its other study areas.³² USTA agrees that the limitation imposed by the last sentence of this rule is not in the public interest because it discourages carriers from seeking incentive regulation where possible. In addition, this limitation effectively becomes moot with the eventual removal of the carrier common line charge from the common line rate

²⁶ See USTA 2002 Comments at 18.

²⁷ See *Biennial Review 2002*, WC Docket No. 02-313, Comments of CenturyTel, Inc. (Oct. 18, 2002) (CenturyTel Comments) at 2-6.

²⁸ See NTCA Comments at 4-5.

²⁹ See *Id.* at 4.

³⁰ Part 64, Subpart I of the Commission's rules require carriers to allocate the costs of central office equipment and outside plant investment between regulated and nonregulated activities based on a forecast of the relative regulated and nonregulated use during a three-year period. 47 C.F.R. §64.901(b)(4). In previous comments, USTA advocated elimination of the central office and outside plant forecast rule. See USTA 2000 Comments at 36; see also USTA 2002 Comments at 25. The Commission has declined to adopt USTA's proposal to eliminate the forecast rule.

³¹ Because the rules require that actuals also be tracked and that the highest nonregulated amount (whether it be a forecast or an actual) be used, the concern about deploying networks for future activities would be addressed with the first forecast. Future increases in actual usage above the forecast would raise the nonregulated amount while a decrease in actual usage would have no impact.

structure for rate-of-return carriers as of July 1, 2003, when the subscriber line charge caps are scheduled to reach the maximum level.³³

Broadband - Form 477

USTA supports the assertion by Winstar Communications, LLC (Winstar) that the Commission's data collection requirements for Form 477 are deficient.³⁴ Winstar believes that the reporting requirements of Form 477 underestimate the deployment of certain broadband services because there is no place for them on the form.³⁵

Further, USTA contends "that the Commission's reporting obligations must ensure regulatory parity."³⁶ The broadband market has several substitutable platforms: wireline, wireless, satellite and cable. ILECs are not the dominant providers of broadband services in the broadband market place. Thus, ILECs should not have to provide comprehensive information where other providers of broadband services have little or no reporting obligations.

Moreover, USTA urges the Commission to reconsider an exemption for small, rural, and midsize ILECs from Form 477 reporting requirements in the *Local Competition and Broadband Reporting* proceeding.³⁷ USTA continues to believe that small, rural, and midsize ILECs

³² See CenturyTel Comments at 7.

³³ See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304 at ¶¶ 15 and 41 (rel. Nov. 8, 2001).

³⁴ See *Biennial Review 2002*, WC Docket No. 02-313, Comments of Winstar Communications, LLC at 3-4 (Oct. 18, 2002) (Winstar Comments).

³⁵ See *id.*

³⁶ See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Reply Comments of the United States Telecom Association at 1, (Dec. 20, 1999) (USTA Broadband Reporting Reply Comments).

³⁷ See *Local Competition and Broadband Reporting*, Second Notice of Proposed Rulemaking, CC Docket No. 99-301, at 7 (rel. Jan. 19, 2001).

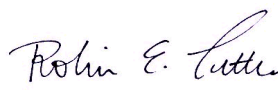
should not bear the financial and administrative costs of responding to a Commission inquiry, particularly where there is no broadband competition.³⁸

II. CONCLUSION

USTA continues to urge the Commission to eliminate unnecessary rules expeditiously. Convergence in communications offerings has rendered many current rules obsolete, such that they no longer serve the public interest. Removing regulatory burdens and avoiding the imposition of new regulatory burdens on common carriers will permit these carriers to serve their customers cost-effectively and efficiently and encourage investment in the telecommunications infrastructure. USTA again urges the Commission to fulfill its commitment to rely on market forces rather than regulation to enhance the development of economically efficient and fair competition.

Respectfully submitted,

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³⁸ See USTA Broadband Reporting Reply Comments at 3.

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on November 4, 2002, Reply Comments of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the service list.

/s/Meena Joshi
Meena Joshi